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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 OSTER, GARY,

11 Plaintiff,

12 v.

13 CLARKE, HAROLD, et al.,

14 Defendants.
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Case No. C07-5508RJB-KLS

ORDER ADOPTING
REPORT AND
RECOMMENDATION,
DENYING PLAINTIFF'S
MOTION FOR RETURN
OF SEIZED LEGAL
PAPERS

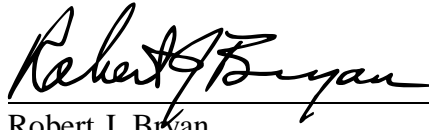
17 The Court, having reviewed plaintiff's complaint, the Report and Recommendation of Magistrate
18 Judge Karen L. Strombom (Dkt. 64), Plaintiff's Motion for Return of Seized Legal Papers, Permission to
19 Use Writ-Writer and to Supplement the Complaint, and for Imposition of Sanctions ("Motion for Return of
20 Seized Legal Papers") (Dkt. 63) and the remaining record, does hereby find and **ORDER:**

21 (1) The plaintiff requests in his Motion for Return of Seized Legal Papers (Dkt. 63) that the court
22 (a) order the defendants to return legal papers seized from the plaintiff and Mr. Silva, a prisoner
23 the plaintiff states is assisting him in this case; (b) appoint Mr Silva to act as the plaintiff's "writ-
24 writer"; (c) permit the plaintiff to supplement the complaint; and (d) impose sanctions on the
25 defendants, defense counsel and/or the Washington State Department of Corrections. Dkt. 63.
26 Assuming that the plaintiff's legal papers were seized by Department of Corrections' staff, the
27 plaintiff has not shown that the Department of Corrections acted improperly in taking the
28 documents or issuing infractions against the plaintiff. For this reason, the court should not order

1 the defendants to return legal papers. The court should not order another prisoner to assist the
2 plaintiff in the preparation of his case. The court should not impose sanctions on the defendants
3 because the plaintiff has not shown that the Department of Corrections acted improperly in
4 allegedly taking the documents. Furthermore, the plaintiff had adequate time to prepare any
5 objections to the Report and Recommendation (Dkt. 64). Finally, the court should not permit the
6 plaintiff to amend his complaint because the facts stated in this motion are unrelated to the
7 plaintiff's underlying allegations in his complaint and are untimely because the Report and
8 Recommendation (Dkt. 64) is before the court on a motion for summary judgment. The Plaintiff's
9 Motion for Return of Seized Papers is **DENIED**.

10 (2) The Report and Recommendation (Dkt. 64) is **ADOPTED**. Defendants' Motion for Summary
11 Judgment (Dkt. 47) is **GRANTED**. Plaintiff has failed to allege facts that are sufficient to form a
12 basis for a constitutional violation; plaintiff's claims are **DISMISSED** with prejudice.

13 DATED this 4th day of May, 2009.

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16 Robert J. Bryan
17 United States District Judge
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